

1 UNITED STATES BANKRUPTCY COURT

2 EASTERN DISTRICT OF NEW YORK

3 Case No. 8-16-75545-reg

4 Adv. Case No. 8-16-08178-reg

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6 In the Matter of:

7

8 DOWLING COLLEGE,

9

10 Debtor.

11 - - - - - x

12 ZAIKOWSKI,

13 Plaintiff,

14 v.

15 DOWLING COLLEGE,

16 Defendants.

17 - - - - - x

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1 United States Bankruptcy Court  
2 290 Federal Plaza  
3 Central Islip, New York 11722  
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5 June 4, 2018

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21 B E F O R E :  
22 HON ROBERT E. GROSSMAN  
23 U.S. BANKRUPTCY JUDGE  
24

25 ECRO: UNKNOWN

1 HEARING re 8-16-08178-reg [4] ADJ Summons and Notice of Pre-  
2 Trial Conference

3  
4 HEARING re 8-16-75545-reg [74] ADJ Order Scheduling Initial  
5 Case Management Conference.

6  
7 HEARING re 8-16-75545-reg [425] ADJ Order approving Bidding  
8 Procedures for the Sale of the Debtor's Brookhaven Campus  
9 [406] Motion to Sell Property of the Estate Free and Clear  
10 of Liens under 11 U.S.C 363(f) by Debtor Dowling College.

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25 Transcribed by: Sonya Ledanski Hyde

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1 P R O C E E D I N G S

2 CLERK: Next matter up, Dowling College.

3 MR. MCCORD: Good afternoon, Your Honor.

4 Certilman Balman by Richard McCord for ACA Financial  
5 Guarantee Corp.

6 MR. SOUTHARD: Good afternoon, Your Honor. Sean  
7 Southard of Klestadt Winters Jureller Southard & Stevens on  
8 behalf of Dowling College, Debtor-In-Possession.

9 MR. KLEINBERG: Good afternoon, Your Honor.  
10 Howard Kleinberg, Meyer Suozzi for the Dowling College Board  
11 of Trustee members.

12 MR. SIEGEL: Excuse me. Good afternoon, Your  
13 Honor. Glenn Siegel, Morgan Lewis on behalf of Brookhaven  
14 Labs.

15 MR. FRIEDMAN: Good afternoon, Your Honor. Ronald  
16 Friedman, Silverman Acampora, counsel for the Official  
17 Committee of Unsecured Creditors.

18 MR. BERKOWITZ: Good afternoon, Your Honor. Adam  
19 Berkowitz, again, Garfunkel Wild, on behalf of UMB Bank.

20 I'm here with my colleague, Ian Hammel, who is on  
21 the telephone as well.

22 MR. YANG: Good afternoon, Your Honor. Stan Yang  
23 for the United States Trustee.

24 CLERK: Please state your phone appearance on  
25 Dowling.



1 MR. HAMMEL: Good afternoon.

2 MS. ROUPINIAN: Good afternoon. Rene Roupinian of  
3 Outten & Golden, appearing on behalf of Lori Zaikowski in  
4 the adversary proceeding.

5 THE COURT: That's it?

6 MR. WEIDNER: Good afternoon, Your Honor. John  
7 Weider, Barclay Damon, LLP, appearing on a listen-only line,  
8 for Carrier Corporation, mechanic's lien (indiscernible).

9 MR. HAMMEL: Good afternoon, Your Honor. Ian  
10 Hammel on behalf of UMB Bank as Trustee.

11 THE COURT: Is that it?

12 CLERK: Yes.

13 THE COURT: Okay.

14 MR. SOUTHARD: All set? Thank you, Your Honor.  
15 Again for the record, Sean Southard on behalf of Dowling  
16 College.

17 Your Honor, we have just two matters on this  
18 afternoon's calendar, the first of which is the Debtor's  
19 motion in relation to approval of the Brookhaven campus for  
20 sale.

21 The second is the adjourned adversary proceeding  
22 in relation to what we've referred to as the "Warn Act"  
23 litigation.

24 If it's agreeable to Your Honor, we propose to  
25 take the sale motion first. So, Your Honor, as I mentioned,

1 we're here today seeking approval of the Debtor's sale of  
2 its Brookhaven campus to Triple Five Aviation, LLC, which is  
3 the entity that the Debtor has determined submitted the  
4 highest and best bid in accordance with this Court's  
5 approved bidding procedures.

6 Your Honor, the sale process for this Brookhaven  
7 campus started formally back in September of last year when  
8 the Debtor first filed its motion seeking both the entry of  
9 an order approving bid procedures and related sale, notice  
10 approval, and the establishment of deadlines for bids and  
11 auction. And then secondarily seeking an order, which is  
12 the subject of today's hearing, seeking approval of that  
13 sale and the results of that auction and sales procedures  
14 process. That was docketed at Number 406 on this Court's  
15 docket.

16 Your Honor, that motion made clear that the Debtor  
17 was seeking to sell approximately 105 acres, which is known  
18 as the Brookhaven Campus, in the town of Brookhaven, County  
19 of Suffolk, located at the William Floyd Parkway in Shirley,  
20 New York. The Court will recall that the Brookhaven Campus  
21 contains several improvements, including a dormitory  
22 facility as well as various other improvements, including a  
23 -- what is referred to as a national aviation center.

24 The sale, Your Honor, proposed today, includes the  
25 real property, all the fixtures, as well as certain personal

1 property located at the Brookhaven Campus.

2 Your Honor, in terms of liens and secured  
3 positions relative to the property, the Brookhaven Campus is  
4 subject to first liens and security interests in favor of  
5 the Series 2006 Bond Trustee, with one exception, which is  
6 that the dormitory facility I just mentioned is subject to a  
7 first lien in favor of the Series 2002 Bond Trustee. In  
8 addition to those mortgages there are various mechanic's  
9 liens and judgments which were lodged prior to the  
10 bankruptcy filing.

11 And Your Honor will recall that you approved a  
12 bidding procedures and entered a bidding procedures order  
13 back in October of last year, and that was Docket Number  
14 425. That order was served, together with the sale notice,  
15 on all creditors in the case. In addition, the Debtor  
16 published notice of the sale in both Newsday and The Wall  
17 Street Journal.

18 Your Honor will also recall that the original sale  
19 schedule was adjusted and altered to push back the bid  
20 deadline and the auction date beyond the end of the year-end  
21 holidays in 2017. And that an amended notice of those  
22 deadlines was filed, and again, served broadly.

23 We have been in front of this court on several  
24 occasions since then with regular updates to the Court. And  
25 at the last hearing before this Court on May 21st, Your

1 Honor was advised of the high bid received as of that point,  
2 which is, again, from Triple Five Aviation.

3 Thereafter, Your Honor, my office served notice of  
4 that high bid, submitted by Triple Five, and that was  
5 docketed at Docket Number 532, thereafter served on all of  
6 the interested parties. And that notice, Your Honor, set  
7 various deadlines and gave the parties notice as to our  
8 intention to proceed today, and effectively gave one last  
9 opportunity to interested purchasers to submit a higher or  
10 better bid by May 30th.

11 Your Honor, we thereafter provided notice to  
12 interested parties as to the Debtor's determination to close  
13 that auction and determined Triple Five to be the highest  
14 and best bid. And we filed a declaration, by Robert  
15 Rosenfeld, who is the chief restructuring officer of the  
16 Debtors, in support of the motion to approve this sale free  
17 and clear of liens, claims and encumbrances.

18 Your Honor, on Friday of last week the Committee  
19 also filed a statement in support of the Debtor's motion to  
20 proceed with approval of the Brookhaven Campus sale to  
21 Triple 5 Aviation. No objections have been filed, Your  
22 Honor.

23 And turning to the declaration of Mr. Rosenfeld,  
24 which was filed on Thursday of last week, the Rosenfeld  
25 declaration talks about, and explains, Mr. Rosenfeld's role

1 and responsibility in relation to the sale process. It  
2 discusses the extensive marketing efforts, both with the  
3 real estate agents retained by the Debtor, as well as the  
4 Debtor's representatives and the Committee, counsel in  
5 particular. That marketing, Your Honor, occurred through a  
6 combination of means, including direct mailing, press  
7 releases, color brochures, an offering memorandum, both  
8 traditional print and web based advertising, as well as  
9 direct to broker solicitation and other marketing activities  
10 through social media.

11 As set forth, Your Honor, in the report which was  
12 prepared by those real estate brokers, dated May 17 of 2018,  
13 which was attached to Mr. Rosenfeld's declaration at Exhibit  
14 A, since the first marketing efforts began there were over  
15 6,000 unique visitors to the property auction webpage  
16 maintained by those agents. The agents received  
17 approximately 150 direct inquiries, of those inquiries  
18 approximately 60 parties entered into nondisclosure  
19 agreements in order to gain access to confidential  
20 information, and of those parties approximately 19 toured  
21 and physically inspected the Brookhaven Campus on at least  
22 one occasion, although many of them inspected on more than  
23 one occasion.

24 Your Honor, in addition to those tours of those  
25 interested parties led by the campus agents, the Debtor's

1 representatives and counsel to the Creditors Committee also  
2 arranged and participated in several property tours with  
3 additional interested parties that either contacted the  
4 Debtor and its representatives or counsel to the Creditors  
5 Committee.

6 Your Honor, also in Mr. Rosenfeld's declaration is  
7 an explanation and recitation of the prior auction  
8 proceedings that took place on January 31st. Prior to that  
9 auction the Debtor had received three bids for the  
10 Brookhaven Campus. In consultation with its creditors, the  
11 Debtor designated each of those bidders as a qualified  
12 bidder, and then conducted an auction at the law offices of  
13 Certilman Balin in East Meadow.

14 The highest bid, which has been previously  
15 reported to this Court, after the initial auction process,  
16 was 10.2 million. The second highest bid after that auction  
17 was 10.1 million. And as this Court is aware, neither the  
18 lenders nor the Creditors Committee supported a sale of the  
19 campus at that level of bidding or purchase price. And the  
20 level of bidding that day was less than the expected values  
21 by the Debtor in relation to its understanding of estimates  
22 of value prior to the auction. So that auction was  
23 adjourned.

24 And following the adjournment of that auction, the  
25 Debtor engaged in many meetings and discussions with

1 interested parties in an effort to better understand both  
2 the possible development opportunities at the Brookhaven  
3 Campus, and generally in an overall effort to try to find a  
4 greater value for the creditors of this estate.

5 Your Honor, we've previously explained, at prior  
6 hearings before this Court, generally, that back and forth  
7 with the interested parties, which has included various  
8 representatives of the Town of Brookhaven, and overall those  
9 efforts, which spanned approximately four months, led to the  
10 identification of an additional 18 parties who had shown  
11 interest in a possible purchase opportunity of the  
12 Brookhaven Campus.

13 Overall then, on or about May 10th of this year, a  
14 formal bid was submitted to the Debtor, by Triple Five  
15 Aviation, and that was for a purchase price of \$14 million.  
16 Triple Five has provided my office with a 10 percent  
17 deposit, equal to \$1.4 million, and that is currently in my  
18 firm's escrow account. They have also executed a purchase  
19 agreement that is in a form acceptable to the Debtor, a copy  
20 of which was recently filed on this Court's docket on  
21 Thursday afternoon of last week.

22 Your Honor, in consultation with the lenders and  
23 the Creditors Committee, it has been determined, by the  
24 Debtor, that Triple Five has submitted the highest and best  
25 offer for the Brookhaven Campus and Dowling's Board of

1 Trustees has authorized and approved Mr. Rosenfeld to  
2 execute that asset purchase agreement, which he in fact did,  
3 and to close the sale of the Brookhaven Campus with Triple  
4 Five, subject to Your Honor's approval today.

5 Your Honor, at the last hearing, as I mentioned,  
6 and in the presence of all of the major creditor  
7 constituencies, we did explain our intention to proceed  
8 today with approval of the Triple Five offer. Notice to  
9 that effect was docketed, parties in interest were given the  
10 opportunity to submit a higher or better bid. No such bid  
11 was submitted by the deadline of Wednesday last week, and  
12 therefore no auction took place. And the Debtor determined  
13 to close the auction formally and provided that notice to  
14 parties in interest as well.

15 Your Honor, our expectation in relation to the  
16 sale approval, should Your Honor find it acceptable today  
17 with Triple Five, is to close the transaction within  
18 approximately 45 days. And Your Honor, in the Debtor's  
19 business judgment, the Debtor believes that the sale to  
20 Triple Five is the highest and best bid, after an extensive  
21 marketing process, in accordance with the approved  
22 procedures entered in this Court's bidding procedures order.

23 It's important to close that proposed sale as soon  
24 as possible to avoid continuing losses associated with the  
25 expenses, carrying costs of the property.



1           Your Honor, for the avoidance of doubt, and I know  
2           this is something that has come up previously before the  
3           Court, the Debtor does not expect to make any payments or  
4           distributions at closing from the proceeds to the secured  
5           creditors or to any other party, and instead I think all  
6           parties are in agreement that those monies will remain  
7           effectively in the Debtor's account, subject to further  
8           order of Your Honor, should Your Honor approve the sale  
9           today.

10           Your Honor, we believe adequate notice and  
11           marketing of this sale opportunity was provided and no party  
12           has filed an objection to the relief sought in today's sale  
13           motion. The Debtor has no real practical alternative to  
14           selling Brookhaven Campus, as proposed in the motion, and  
15           therefore asserts that consummation of this sale with Triple  
16           Five is in the best interest of the Debtor and its estate.

17           The purchase agreement with Triple Five was  
18           negotiated and entered into by and among the Debtor and  
19           Triple Five in good faith and in arm's length fashion.  
20           Triple Five is not an insider of the Debtor, as that term is  
21           defined in the bankruptcy code. There is no continuity of  
22           business enterprise or otherwise between Triple Five and the  
23           Debtor or its estate. And the Debtor believes that this  
24           Court should find that Triple Five should have no successor  
25           liability on account of the Debtor or its obligations

1 following a closing.

2 Your Honor, one other item to bring to Your  
3 Honor's attention, which we've talked about previously, both  
4 in relation to this sale and a prior sale, has to do with  
5 the Not-For-Profit Law and the requirements under Sections  
6 510 and 511 of the New York Not-For-Profit Law. Your Honor,  
7 in relation to this sale, as we've previously indicated to  
8 Your Honor, our office has had many conversations with the  
9 Office of the New York State Attorney General and they have  
10 indeed reviewed the submissions that we've made to this  
11 Court and my understanding is they have no objection to this  
12 sale proceeding today, based on the representations that  
13 have been made.

14 That said, for the record today, Your Honor, we  
15 also do believe that this sale complies with the applicable  
16 non-bankruptcy law including Sections 510 and 511 of the New  
17 York Not-For-Profit Corporation Law. The consideration and  
18 the terms of the sale are fair and reasonable to the Debtor.  
19 The sale contemplates that the proceeds would be used to  
20 repay lawful obligations of the Debtor, consistent with the  
21 not-for-profit purposes of the Debtor and applicable non-  
22 bankruptcy law. And we believe, I believe as Your Honor  
23 does, that no further regulatory or state court approval is  
24 necessary in relation to approval of this sale and the  
25 transfer of the campus to Triple Five, subject to Your

1 Honor's approval and the closing.

2 For all of those reasons, Your Honor, the Debtor  
3 requests approval of the sale today for the reasons set  
4 forth on the record.

5 There is one other item that I wanted to bring to  
6 Your Honor's attention this afternoon, which was somewhat of  
7 a late breaking subject on Friday afternoon. And that is  
8 that Brookhaven Science Associates, which is an entity  
9 formed in relation to the remediation process that has been  
10 ongoing for many years in relation to Brookhaven National  
11 Labs, reached out on Friday afternoon requesting  
12 clarification that this sale approval and the sale order  
13 would not impair their rights in relation to testing  
14 essentially under -- water testing under a memorandum of  
15 understanding that exists between Dowling, Brookhaven  
16 Science Associates and several other agencies that are  
17 involved in the remediation of ground water in the  
18 Brookhaven Town.

19 THE COURT: On this site?

20 MR. SOUTHARD: Your Honor, there are some testing  
21 wells on the north -- northern border of the Brookhaven  
22 Campus that are maintained by Brookhaven Science Associates  
23 under this memorandum of understanding agreement and in  
24 essence they have easement-related rights to enter the  
25 property for purposes of monitoring those wells and testing

1 the water, the ground water that lies underneath the Dowling  
2 -- portion of the Dowling campus. And my understanding is  
3 that there are several of these types of wells around the  
4 Town of Brookhaven, generally speaking, that track a plume  
5 of potential contamination in the ground water from many  
6 years ago.

7 THE COURT: If they find contamination on this  
8 site, is the buyer liable?

9 MR. SOUTHARD: Your Honor, the memorandum of  
10 understanding that exists provides that Dowling, as well as  
11 other parties, but Dowling, and in turn Dowling's successor,  
12 are indemnified by Brookhaven Science Associates. So --

13 THE COURT: So if the ground water is bad, and it  
14 has a negative impact on the property, Brookhaven Lab is  
15 liable?

16 MR. SOUTHARD: Correct, Your Honor, ultimately.

17 THE COURT: Not the buyer?

18 MAN: Correct.

19 MR. SOUTHARD: Correct, Your Honor.

20 MR. SIEGEL: Your Honor, the way it works is that  
21 Brookhaven Labs, or Brookhaven Science Associates is  
22 providing an indemnification. We, of course, can't control  
23 CERCLA. I mean, they're all liable, but we're the  
24 indemnifying party with respect to anybody else who might be  
25 found to be liable.

1 THE COURT: Science is not my best subject.

2 MR. SOUTHARD: Your Honor, the --

3 THE COURT: Somebody goes to build something on  
4 this site, there's a closing. My understanding of closings,  
5 when I used to have to be involved with this stuff, is you  
6 get a phase 1, phase 2, whatever. Let's say they go to  
7 build something and the phase 2 shows there's contaminate,  
8 and the buyer can't do with the site what he wants to do  
9 with it, for whatever reason. The town comes in, the  
10 government comes in and says, you owe us \$100 million  
11 because this 100 acres is a disaster, you've got to clean it  
12 up.

13 Forget the indemnification for a minute. Am I  
14 signing anything that the buyer could say, not me, I got a  
15 federal order saying I'm not liable?

16 MR. SOUTHARD: Your Honor, the extent to which the  
17 Debtor -- it's cutting off the Debtor's liability arguably,  
18 but no.

19 THE COURT: The Debtor doesn't care. The Debtor's  
20 gone. The Debtor's directors may care, because you can't  
21 get rid of it, but the Debtor is gone, so forget the Debtor.  
22 Can Triple Five, does Triple Five, under your order that you  
23 want me to sign, get an out of jail card?

24 MR. SOUTHARD: Your Honor, I think that -- and I  
25 am no expert in CERCLA either, as Mr. Siegel has made clear

1 about his own understanding, but I don't believe that Your  
2 Honor's order would cut that off. But, however --

3 THE COURT: But the order is confusing, because  
4 your order, on the bottom of Page 6, let's say, says that,  
5 and the top of Page 7 it says, "However, this is sold free  
6 of any liability, free and clear of liability for the  
7 buyer." And then you couch it in terms of something I can't  
8 figure out.

9 But I'm telling you today, as I've said in the  
10 past, I'm not signing any order that releases the buyer from  
11 potential liability, if such liability exists for  
12 environmental problems by the feds or the state. This issue  
13 has been going on for 100 -- many, many years. That's why  
14 banks didn't want certain properties, you could threaten  
15 them and say, take my building, and they would say I don't  
16 want the building.

17 I don't believe I have the authority to absolve  
18 anyone from that statutory liability, so as long as we agree  
19 you're not asking me to do that then we don't have a  
20 problem. But it's going to be clear. Now, they may in fact  
21 be indemnified, that's up to -- that's a different issue.

22 MR. SOUTHARD: The Debtor is indemnified and --

23 THE COURT: That's fine.

24 MR. SOUTHARD: -- to the extent to which we pass  
25 it on --

1 THE COURT: And they may then may indemnify their  
2 successor, that's up to the Brookhaven Labs and the  
3 agreement you have with them.

4 MR. SOUTHARD: Yeah.

5 THE COURT: What I'm saying is, that if somebody  
6 chooses, being the feds, or the state, or the town of  
7 Brookhaven, or anybody who has authority to do it, to go  
8 after the current landowner at the time for some  
9 environmental problems, nothing in my order is going to  
10 insulate them from that.

11 MR. SOUTHARD: I understand, Your Honor.

12 THE COURT: So I understand the successor  
13 liability with regard to corporate issues, and that's fine,  
14 at least I understand it. But there are two things in this  
15 order that I want to make sure we're all in synch on. One,  
16 the environmental aspect; and two, you asked me to sell it  
17 free and clear of all liens, claims, encumbrances,  
18 including easements.

19 I'm not sure I can wipe out an easement. An  
20 easement runs with the land.

21 MR. SOUTHARD: Your Honor, so the extent to which  
22 title has taken an exception for easements, most certainly  
23 those are being likewise excepted from the scope of Your  
24 Honor's order.

25 THE COURT: Right. Well, the order is going to be

1 clear and probably consistent with what the title company  
2 says. Because I don't think the Court, I'm not making a  
3 statement for the future, I'm not sure what authority we  
4 have to wipe out easements. We may, depending on what types  
5 and how they are, but as a blanket statement I've got a  
6 problem with it. And if it's not an issue in this case then  
7 we're going to adjust the order to make sure it's clear that  
8 we're not doing anything with easements.

9 MR. SOUTHARD: We can certainly work to fine tune  
10 the order --

11 THE COURT: Okay.

12 MR. SOUTHARD: -- in a way that's acceptable to  
13 Your Honor.

14 THE COURT: And so that's okay with you guys,  
15 right?

16 MR. SIEGEL: Your Honor, I mean I just wanted to  
17 clarify where we are and what I think our understanding is.  
18 This is effectively -- I'm sorry. Do you want me to go  
19 here?

20 MR. SOUTHARD: Please.

21 MR. SIEGEL: This is effectively an executory  
22 contract which everybody wants assumed. We want it assumed  
23 because we're on the hook for this. We are doing ongoing  
24 remediation, we want to make sure the thing remains safe so  
25 that we don't have to pay for the clean-up. They want this



1 assumed because they want us to do that, and they want us to  
2 indemnify them in the event something goes wrong. It's just  
3 this was not initially contained in any of the  
4 documentation. We picked it up at the end.

5 THE COURT: So this was something Brookhaven Labs  
6 acknowledges they may have had responsibility for, so  
7 they're cleaning it up?

8 MR. SIEGEL: Well, the MOU goes back to 2003, this  
9 is something that in the mid-90's the government advised  
10 Brookhaven or some predecessor of Brookhaven, that they  
11 believed Brookhaven to be responsible for. And then  
12 Brookhaven entered into an agreement where they took  
13 responsibility for it.

14 THE COURT: All right.

15 MR. SIEGEL: And that goes back to I think '96 or  
16 even earlier.

17 THE COURT: No, if that's the agreement --

18 MR. SIEGEL: Yeah.

19 THE COURT: -- that's fine with me. I don't --  
20 I'm not trying to create liability.

21 MR. SIEGEL: Yeah.

22 THE COURT: But outside of Brookhaven, if the new  
23 guy comes in and finds buried oil tanks, which has nothing  
24 to do with you guys --

25 MR. SIEGEL: That has nothing to do with us.

1 THE COURT: -- and the state asserts, or the feds  
2 assert liability for that, that has nothing to do with  
3 indemnification.

4 MR. SIEGEL: They are indemnified to the extent of  
5 this MOU and this MOU does not cover that.

6 THE COURT: Okay. No, I'm talking about a  
7 separate issue.

8 MR. SIEGEL: This has to do with wells.

9 THE COURT: This buyer is not getting off the  
10 hook, if he's on the hook, for that.

11 MR. SOUTHARD: Correct, Your Honor.

12 THE COURT: Dowling remains on --

13 MR. SOUTHARD: Not by virtue of Your Honor's sale  
14 order.

15 THE COURT: Right. So Dowling remains on the hook  
16 and anybody responsible at Dowling. And their successor  
17 would -- is not getting anything from the Court where they  
18 could argue, we are -- we took it free and clear of that  
19 liability?

20 MR. SOUTHARD: With regard to the type of  
21 environmental issue Your Honor raises, correct?

22 THE COURT: Okay.

23 MR. SOUTHARD: And there -- to be clear, there was  
24 a phase 1 environmental study done by Dowling that is in the  
25 data room, that was reviewed by all parties.

1 THE COURT: It couldn't have been too bad, they  
2 had kids living there.

3 MR. SOUTHARD: We're not aware of any such issues.  
4 And so yes, I agree with Your Honor's statement, however.

5 THE COURT: Okay. So as long as the buyer is  
6 aware, we're going to make sure the order is clear, and  
7 that's consistent with the deal, and I got that. There's  
8 nobody from the buyer here, right?

9 MR. SOUTHARD: Your Honor, there is a business  
10 person here from the buyer, but he is not represented by  
11 counsel today.

12 THE COURT: You want to answer questions or you  
13 don't want to answer? You don't have to if you don't want  
14 to.

15 MR. BIENENSTOCK: Yeah, no, I think that it's our  
16 -- that's what our understanding is. That it's related to  
17 anything that -- it's related to anything that Brookhaven  
18 may --

19 THE COURT: Since you're not represented, just for  
20 my information, is what the lawyers have just said  
21 consistent with what you believe your liabilities and  
22 responsibilities are if you become the buyer?

23 MR. BIENENSTOCK: Yes.

24 THE COURT: Okay.

25 MAN: Have you identified yourself?

1 MR. BIENENSTOCK: Stuart Bienenstock.

2 THE COURT: Oh, sorry.

3 MR. SOUTHARD: Your Honor, it's --

4 THE COURT: Hold it. Let him identify himself,  
5 please.

6 MR. SOUTHARD: Sure.

7 MR. BIENENSTOCK: Stuart Bienenstock from Triple  
8 Five.

9 THE COURT: Did you get that?

10 MR. SOUTHARD: For the record Stuart Bienenstock  
11 from Triple Five.

12 MAN: And his office? What does he do for the  
13 company?

14 THE COURT: Just tell us what he does, who he is.  
15 If you tell me he's a bankruptcy lawyer that works for  
16 Proskauer.

17 MR. SOUTHARD: No. Your Honor, Mr. Bienenstock is  
18 the director of business development for Triple Five.

19 THE COURT: Okay. Again, he's not represented, so  
20 I would not hold them, but I just wanted to know that he  
21 believes it's consistent with what you're saying.

22 MR. SOUTHARD: Yes, Your Honor. And again, this  
23 issue, regretfully, arose for the first time at 3:00 on  
24 Friday afternoon. And so Mr. Bienenstock has --

25 THE COURT: Along with the --

1 MR. SOUTHARD: -- like the rest of us, just --

2 THE COURT: -- 30 other issues that are going to  
3 arise at closing.

4 MR. SOUTHARD: -- had the weekend, but we've made  
5 all good faith efforts to bring the issue to a head before  
6 the hearing today and have worked with counsel in that  
7 fashion. So I do not expect, and that was the point of my  
8 initially raising this matter, I do not expect it to be an  
9 issue and I believe we will have satisfactory language --

10 THE COURT: Now, are you assuming that contract?

11 MR. SOUTHARD: The current -- so the original ask  
12 was essentially that this order do no harm or not impair the  
13 rights. I think we are discussing, at this point, however,  
14 the potential assumption and assignment of that.

15 THE COURT: Because I would think the buyer wants  
16 to make sure he has whatever indemnification rights exist.

17 MR. SOUTHARD: I think that's right, Your Honor.  
18 And --

19 THE COURT: And he should.

20 MR. SOUTHARD: -- I don't think there's any  
21 objection to --

22 MR. SIEGEL: No, I think we agree that it would be  
23 cleaner to do it as an assumption and assignment.

24 THE COURT: Yeah, I think that will make it easier  
25 for everybody, because I don't want to go down the road two

1 years from now and have a litigation over whether he was or  
2 wasn't covered.

3 MR. SOUTHARD: Agreed.

4 THE COURT: So if you can just fix that up it will  
5 work.

6 All right. Anybody else want to be heard on this?  
7 So we're selling it for 14 --

8 MR. SOUTHARD: Million dollars.

9 THE COURT: -- 14 million. You're renegotiating,  
10 in some fashion, the carve-out agreements, as I understand  
11 it.

12 MR. SOUTHARD: Yes, Your Honor.

13 THE COURT: There still will be some  
14 distributions, I assume to the unsecureds. There will be a  
15 pot of money available, to the extent the Committee believes  
16 there are any potential causes of action, which will finance  
17 that. There will be money, I'm sure, to pay the  
18 administrative expenses. And none of the money will be  
19 distributed to any of the lienholders or anyone else without  
20 further order of the Court.

21 MR. SOUTHARD: Correct.

22 MAN: Correct.

23 THE COURT: Okay. Anybody want to be heard? Last  
24 chance. Done. The Court will approve the sale.

25 MR. SOUTHARD: Thank you, Your Honor.

1 THE COURT: Okay.

2 MR. SOUTHARD: Your Honor, the second matter on  
3 today's calendar is the adjourned adversary proceeding,  
4 which is commenced by Lori Zaikowski as Class Plaintiff in  
5 relation to essentially Warn Act claims against Dowling  
6 College as the Defendant.

7 Your Honor, we've been in front of you many times  
8 in relation to this matter, and I believe the general  
9 agreement was that certain settlement efforts, which began  
10 in the context of court-approved mediation and have, to some  
11 extent, stalled, on account of the uncertain value  
12 associated with the Brookhaven sale, can now restart based  
13 on Your Honor's approval today of the sale of 14 million.

14 I would propose that we adjourn this matter for at  
15 least 30 days, allow the parties to attempt to finalize --

16 THE COURT: Do we have a mediator in this, not  
17 that --

18 MR. SOUTHARD: Your Honor, Yann Geron --

19 THE COURT: -- I'm a big fine of that. Huh?

20 MR. SOUTHARD: Yann Geron was appointed by this  
21 Court as mediator, however, he has not really been engaged  
22 since the expiration of his original term under Your Honor's  
23 order. It's conceivable that his efforts could be useful in  
24 the next 30 days, but I think, frankly, there's a bid and  
25 ask that is outstanding and the parties, with the assistance

1 of the Committee --

2 THE COURT: Well, once there's a bid and ask  
3 you're just talking about monies, so you should be able to  
4 solve it.

5 MR. SOUTHARD: Agreed.

6 THE COURT: I don't think you need a mediator when  
7 it's just money.

8 MR. SOUTHARD: We tend to agree on behalf of the  
9 Debtor, and I believe the Committee is in agreement as well.

10 MR. FRIEDMAN: Yes.

11 THE COURT: All right. So at the next hearing you  
12 can tell me where we are on that.

13 MR. SOUTHARD: Yes, Your Honor.

14 THE COURT: And what are we doing with plans and  
15 disclosure statements and how do we get out of this thing?

16 MR. SOUTHARD: Your Honor, as we've told you  
17 before, and there's at least one filing to this effect,  
18 there is a substantial draft of the plan that essentially  
19 needs to be reworked and the disclosure statement now that  
20 we have some finality associated with the value of the  
21 Brookhaven property. And my proposal, subject to speaking  
22 with counsel to the Committee and the Secured Creditors,  
23 would be to work to have that on file in the next 60 days or  
24 so, in a revised fashion, with the expectation that the  
25 Brookhaven sale will hopefully close in that interim period.



1 THE COURT: All right. The timing makes sense.  
2 Are we getting close on any statutory problems for bringing  
3 --

4 MR. SOUTHARD: November --

5 THE COURT: -- adversaries?

6 MR. SOUTHARD: I'm sorry, Your Honor. November  
7 29th was the filing date, in 2016, so there are, I guess,  
8 five months remaining in that period before the two year  
9 point is reached.

10 THE COURT: Don't lose track of it, guys.

11 MAN: We got it, Your Honor.

12 THE COURT: All right. Okay. Anybody else want  
13 to be heard? Good.

14 So we got both pieces sold now. We can go to a  
15 plan, we can try to figure the rest of this out. Good.  
16 That's where we are.

17 MR. SOUTHARD: Thank you, Your Honor.

18 THE COURT: Thank you, guys.

19 MAN: Thank you, Your Honor.

20 MAN: Your Honor, is there going to be a date for  
21 the (indiscernible)?

22 THE COURT: Yeah.

23 CLERK: We have July 23rd.

24 THE COURT: That's not going to do you any good,  
25 July 23rd. Nothing is going to be new by then, right?

1           MAN: For Zaikowski that's a fine date, Your  
2 Honor.

3           MAN: For the plan and disclosure statement.

4           THE COURT: Well, the plan and disclosure  
5 statement -- they're not going to file it for two months,  
6 probably.

7           MR. SOUTHARD: That might be a good holding date,  
8 Your Honor, for purposes of the Zaikowski matter and we  
9 could certainly report to the Court.

10          THE COURT: Let's do that. Put it on for that and  
11 at some point you're going to move ahead with the litigation  
12 and continue to negotiate, while you litigate.

13          MAN: Correct.

14          THE COURT: Because I always find that nothing  
15 ever happens until whatever the 11th hour is and so whatever  
16 date I put it doesn't matter, it's going to be the day  
17 before that hearing date. So the message is, on the 23rd,  
18 if we don't have an agreement, it doesn't have to be  
19 approved that day, but if we don't have an agreement, you're  
20 going to continue -- you're going to litigation.

21          MR. SOUTHARD: Understood, Your Honor.

22          THE COURT: All right?

23          MR. SOUTHARD: Thank you.

24          THE COURT: And you can tell the other side that.

25          MAN: They're on the phone. They're on the phone.

1 THE COURT: Oh.

2 MS. ROUPINIAN: I hear you, Your Honor.

3 THE COURT: So you heard?

4 MS. ROUPINIAN: I heard.

5 THE COURT: Okay.

6 MS. ROUPINIAN: Thank you.

7 THE COURT: Okay, guys. Thank you.

8 MAN: And what time is that, Your Honor?

9 THE COURT: 1:30.

10 MR. SOUTHARD: Thank you very much, Your Honor.

11 THE COURT: Thank you.

12 MAN: Thank you, Your Honor. Have a good day.

13 THE COURT: Thank you.

14 MR. SOUTHARD: Thank you, Your Honor.

15 (Whereupon these proceedings were concluded at

16 2:44 PM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing  
transcript is a true and accurate record of the proceedings.

Sonya  
Ledanski Hyde

Digitally signed by Sonya  
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Date: June 12, 2018

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